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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/956,902	09/21/2001	Russell F. Durgin	10546/55603	3788

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EXAMINER
JACKSON, GARY

ART UNIT PAPER NUMBER

3731

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 3731

DETAILED ACTION

The indicated allowability of claims 37-49 is withdrawn in view of the newly discovered reference(s) to March and Utz. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

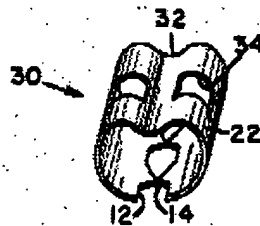
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 37- 41 are rejected under 35 U.S.C. 102(b) as being anticipated by March (US Patent 4,217,902). The above claims are considered fully readable on March which disclose (see, e.g. Fig. 4) an instrument comprising:

a first and second tissue grasping surfaces on right and left side of the center line and having first and second ends; first and second joints connected at the first and second end respectively; first and second surfaces are movable toward and away from each other.

See figure below:



The inventions claimed also recite intended use with an endoscopic device. However, said device has not been positively recited and therefore is given no patentable weight.

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Claims 37- 38, 40-42 and 44-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Utz (US Patent 4,832,027). See the rejection using Utz below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 42- 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over March in view of Utz (US Patent 4,832,027). The Utz patent also discloses a substantially similar clip having first and second tissue grasping surfaces formed as a semi-circular shaped member. The patent also discloses various first and second joints configurations. It would have been obvious to one having ordinary skill in the art to form March devices of the claimed grasping surfaces and joints configurations as taught by Utz depending on the particular tissue to be grasped and desired tension. The claimed joints configurations are an obvious design choice.

Allowable Subject Matter

Claims 1-36 are allowable over the art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (703) 308-4302. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Recla can be reached on (703) 308-1382. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 308-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Gary Jackson
Primary Examiner
Art Unit 3731

GJ
June 28, 2003